UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Paul Hallenbeck,

Plaintiff,

vs.

Healthcare IP Partners, LLC,
Nisco International, Inc.,
Carl George, and John Does 1-10,

Defendants.

Case Type: Fair Labor Standards Act

Court File No. ____________________

JURY TRIAL REQUESTED

COMPLAINT

Plaintiff Paul Hallenbeck (**"Plaintiff"** or **"Hallenbeck"**), as and for his Complaint against Defendants, states and alleges as follows:

The Parties

1. Hallenbeck is a natural person residing at 1207 Tullamore Circle, Chester Springs, Pennsylvania 19425.

2. Upon information and belief, Defendant Healthcare IP Partners, LLC (**"HIPP"**) is a Minnesota limited liability company with its principal place of business at 221 First Avenue Southwest, Suite 300, Rochester, Minnesota 55902.

3. Upon information and belief, Defendant Nisco International, Inc. (**"Nisco"**) is a Minnesota domestic corporation with its principal place of business at 221 First Avenue Southwest, Suite 300, Rochester, Minnesota 55902.

4. Upon information and belief, Defendant Carl George (**"George"**) is a natural person residing at 108 Second Street, Excelsior, Minnesota 55331.

5. Upon information and belief, Defendants John Does 1-10 (**"John Does 1-10"**) are natural persons, corporations, limited liability companies, partnerships or other legal entities whose names and addresses are presently unknown.

Jurisdiction and Venue

6. This Court has subject matter jurisdiction over Plaintiff's claims arising under the federal Fair Labor Standards Act (**"FLSA"**), 29 U.S.C. § 201 *et seq.*, pursuant to 28 U.S.C. § 1331, insofar as such claims arise under the laws of the United States.

7. This Court has supplemental subject matter jurisdiction over Plaintiff's remaining pendant state law claims against Defendants pursuant to 28 U.S.C. § 1367, insofar as these claims are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

8. Upon information and belief, this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs, and is between citizens of different states. Plaintiff is a citizen of the State of Pennsylvania. Upon information and belief, all known Defendants are citizens of the State of Minnesota.

9. Pursuant to 28 U.S.C. § 1391, the United States District Court for the District of Minnesota is a proper venue for this action because, upon information and belief, all of the Defendants reside in this District and a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this District.

Factual Allegations

10. Defendant Nisco was incorporated as a Minnesota corporation on or about September 26, 2006.

11. Defendant HIPP was organized as a Minnesota limited liability company on or about November 14, 2008.

12. Defendant Nisco entered into a license agreement (the **"License Agreement"**), effectively dated October 1, 2009, with the Mayo Foundation for Medical Education and Research (**"Mayo"**) in order to develop and commercialize certain medical patent rights.

13. As part of the License Agreement, Defendant Nisco was obligated to raise a minimum level of capital to fund the business venture.

14. Stephen J. Russell, M.D., Ph.D. was Director of Molecular Medicine at Mayo (**"Russell"**) at all material times alleged herein. Upon information and belief, Russell was the original founder of Defendant Nisco. Upon information and belief, at all material times alleged herein, Russell was an officer, director, manager, and/or employee of Defendant Nisco.

15. In November 2009, Russell contacted Hallenbeck via telephone to determine Hallenbeck's interest in working for Defendant Nisco and represented that:

(a) Defendant HIPP and/or Defendant George had already obtained $10,000,000 - $15,000,000 in funding for Defendant Nisco;

(b) Defendants HIPP and Nisco planned to raise more capital by spring 2010;

(c) There was a high likelihood of obtaining up to $100,000,000 in additional funding;

(d) Defendant George was the head of Defendant HIPP; and

(e) Hallenbeck's work with Defendant Nisco would be based in Rochester, Minnesota.

16. On or about December 14, 2009, Hallenbeck interviewed in Rochester, Minnesota in person with several representatives of Defendants HIPP and Nisco, including Russell, Defendant George, Gus Chafoulias (**"Chafoulias"**), George Danko, executive vice president for

Defendant HIPP (**"Danko"**), Lisa Dinndorf, executive vice president of communications for Defendant HIPP (**"Dinndorf"**), and others.

17. In order to induce Hallenbeck to accept employment, at the time of the interview, and thereafter, Defendant George represented to Hallenbeck, among other things, that:

(a) Defendant Nisco had $10,000,000 in financing;

(b) Defendants HIPP and Nisco planned to raise more capital by spring 2010 in an offering that was already oversubscribed, that it was a "done deal", and that all they needed was the official private placement documents to be prepared;

(c) This is "very simple financing" and that Defendant George and Chafoulias could "do this deal on a handshake";

(d) Defendant Nisco also had commitments to obtain up to $150,000,000 as debt financing by summer 2010; and

(e) Defendant Nisco already had commitments from the sovereign bank of Saudi Arabia.

18. During Hallenbeck's discussions with Defendants regarding potential employment, Hallenbeck advised Defendants repeatedly that he would not be interested in a job unless Nisco's funding was already in place. For example, on December 31, 2009, Hallenbeck notified Defendant George via e-mail that Hallenbeck's willingness to accept an offer of employment was based, in part, on Hallenbeck's understanding that Defendant Nisco had $10,000,000 in funding.

19. Upon information and belief, at the time Defendant George made the statements referenced in paragraph 17 of this Complaint, Defendant George was the president of Defendant Nisco and the CEO of Defendant HIPP.

20. Upon information and belief, at the time Defendant George made the statements referenced in paragraph 17 of this Complaint, Defendant George had the actual authority of Defendants HIPP and Nisco to make these statements.

21. Upon information and belief, at the time Defendant George made the statements referenced in paragraphs 17 of this Complaint, Defendant George had the apparent authority of Defendants HIPP and Nisco to make these statements.

22. On or about January 6, 2010, Defendants HIPP and Nisco made a formal offer of employment to Hallenbeck to take the position of Chief of Research and Clinical Operations at Defendant Nisco. A true and correct copy of the offer letter is attached as Exhibit A, hereby incorporated by reference, and will be referred to as the **"Employment Agreement"**.

23. On or about January 6, 2010, Hallenbeck signed and accepted the terms of the Employment Agreement, thereby forming a contract.

24. Among other things, the Employment Agreement provides that:

(a) "On behalf of Healthcare IP Partners, LLC (HIPP), I am pleased to offer you the position of Chief of Research and Clinical Operations at Nisco International, Inc." (Exhibit A, Employment Agreement, p.1)

(b) "Your work location will be the Nisco International headquarters in Rochester, MN." (Exhibit A, Employment Agreement, p. 1)

(c) "In this capacity, you will report to Dr. Russell and I." (Exhibit A, Employment Agreement, p. 1)

(d) "Your initial annualized base salary would be $220,000, less applicable taxes and deductions." (Exhibit A, Employment Agreement, p. 1)

(e) "This salary would be paid, as earned, on a bi-monthly basis following the Company's normal payroll practices." (Exhibit A, Employment Agreement, p. 1)

(f) "You will be eligible for bonuses up to 100% of your annual salary based on meeting predefined company and individual delivery based goals." (Exhibit A, Employment Agreement, p. 2)

(g) "You will be eligible to receive stock options in Nisco International. You will receive an initial award for joining of 200,000 options exercisable at $1.00 per share. Additionally, you will be granted options as quarterly individual company goals are met. (Exhibit A, Employment Agreement, p. 2)

(h) "Payment of commuting expense (airfare and rental car) and temporary housing (hotel or apartment) until September 1, 2010 or until your family moves, whichever comes first." (Exhibit A, Employment Agreement, p. 3)

(i) "Finding Trips: The Company will provide you, your spouse/partner and children with two home finding trips for up to four nights (including travel time). Reimbursement for airfare and hotel during your trips." (Exhibit A, Employment Agreement, p. 3)

25. Hallenbeck reasonably relied upon statements and promises made by Russell and Defendants HIPP, Nisco, and George, including those alleged in paragraphs 15, 17, and 24 of this Complaint, in his decision to accept the terms of the Employment Agreement.

26. Hallenbeck began work as Defendant Nisco's Chief of Research and Clinical Operations on or about January 11, 2010.

27. After accepting the Employment Agreement and beginning work, Defendants HIPP, Nisco, and George repeatedly told Hallenbeck that Defendant Nisco had secured funding as originally represented to him during the negotiation and acceptance of the Employment Agreement and that Defendant Nisco would secure additional funding. Among other things, Defendants made the following representations to Hallenbeck:

(a) On or about July 22, 2009, Dinndorf, provided Defendant George a commitment letter stating the intent of HIPP to fund $5,000,000 for the expansion of Nisco and to fund the structural expenses associated with the commercialization process. A true and correct copy of the e-mail is attached as Exhibit B. The commitment letter stated, in part, that "[y]ou may use this letter as needed to inform others of our [HIPP's] commitment." Thereafter, Defendants provided a copy of the commitment letter to Hallenbeck.

(b) In January 2010, Defendant George told Hallenbeck in a face to face meeting attended by Hallenbeck, George, Dinndorf, Russell, and Russell's colleague from Mayo's Department of Molecular Medicine, to carry on business operations as if Defendant Nisco had $160,000,000 in funding.

(c) On January 29, 2010, Russell's colleague from Mayo's Department of Molecular Medicine informed Defendant George in an e-mail that the National Institutes of Health (**"NIH"**) was considering whether to fund Defendant Nisco's application. The Mayo representative asked Defendant George, "[NIH] want[s] to know if we can do the work with only half of the funding requested (ie. $1.5M). Specifically, they asked whether the company can provide the funds to cover the shortfall." Defendant George replied in an e-mail (which he copied to Hallenbeck) stating, "YES & CONGRATULATIONS!" Based on this e-mail, Hallenbeck understood that Defendant Nisco could provide at least $1.5 million of funds.

(d) In February 2010, Defendant George told Hallenbeck that while no money had been put in any account for Defendant Nisco, that money would be placed in such an account on an as-needed basis by Defendant HIPP.

(e) On February 5, 2010, Hallenbeck sent an e-mail inquiring whether Defendant Nisco could provide funding in the amount of $1.6 million to match a potential grant. On the same day, Defendant George replied to Hallenbeck in an e-mail "Commit commit commit." Based on this e-mail, Hallenbeck understood that Defendant Nisco could provide at least $1.6 million of funds.

(f) Between January 2010 and March 2010, Defendant George repeatedly told Hallenbeck in face to face meetings and phone conversations that the spring 2010 offering was oversubscribed and that this would raise an additional $10 to $15 million in funding for Defendant Nisco.

(g) On February 27, 2010, following inquiries by Hallenbeck regarding Defendant Nisco's funding requirements pursuant to the License Agreement with Mayo, Defendant George told Hallenbeck in an e-mail that, "It's Done" referring to the March 1, 2010, deadline for raising the money required by the License Agreement.

(h) On April 19, 2010, Russell told Hallenbeck in an e-mail that Defendant George, "explained to us . . . last week that HIPP has already invested $5 million in NISCO in the form of convertible debentures..."

(i) On May 3, 2010, George told Hallenbeck, and others, that, "[t]his offering which we expect to oversubscribe . . . should allow us to raise around $14 to $15 million in the next 4-6 weeks. *In conjunction with the $5 million convertible preferred from February* this will provide the company a total of approx (sic) $20 million in capital to undertake its next steps." (emphasis added). Based on this e-mail, Hallenbeck understood that Defendant Nisco had raised at least $5 million to fund company operations and that Defendant George believed that substantial additional money would be raised quickly.

(j) On May 27, 2010, Kevin Molloy, administrative executive for Defendant HIPP (**"Molloy"**), told Hallenbeck in an e-mail that "Carl [George] agreed to the financing concept of $2,000,000 as soon as possible (7 /10 days), potentially using Steve Russell's friend as the donor and doing the offering within the next 3 to 4 weeks...a range of $5/10,000,000 was discussed depending on the valuation of the company."

(k) On May 27, 2010, Danko told Hallenbeck in an e-mail that, "discussions are taking place with Mayo Clinic to quickly secure a base level of funding that will give you the confidence to lead the business . . . ."

(l) In June 2010, Defendant George represented in a telephone conference call that he would put $4.2 million into Defendant Nisco within 5 days as part of the funding required by the Mayo License Agreement.

(m) On June 23, 2010, Defendant George stated in an e-mail to Hallenbeck's former attorney in Pennsylvania that, "[a]s to your discussion about the company being insolvent, *it is not* and has a positive net worth and a significant market value." (emphasis added).

(n) On July 2, 2010, Danko stated in an e-mail to Hallenbeck that, "Bill Hogan is the new business leader. Bill believes that he can bring substantial capital and strong advisors to the business...Meanwhile, Kevin Griffin is starting to have success with raising capital for the NISCO debenture..."

28. Upon information and belief, at the time Defendant George made the statements referenced in paragraph 27 of this Complaint attributed to him, Defendant George was the president of Defendant Nisco and the CEO of Defendant HIPP.

29. Upon information and belief, at the time Defendant George made the statements referenced in paragraph 27 of this Complaint attributed to him, Defendant George had the actual authority of Defendants HIPP and Nisco to make these statements.

30. Upon information and belief, at the time Defendant George made the statements referenced in paragraph 27 of this Complaint attributed to him, Defendant George had the apparent authority of Defendants HIPP and Nisco to make these statements.

31. Upon information and belief, at the time Defendants made the statements referenced in paragraph 27 of the Complaint, Defendants knew the statements were false.

32. At the time Defendants made the statements referenced in paragraph 27 of the Complaint, Defendants were negligent and careless in making such statements without knowing or adequately inquiring into the truth or falsity of such statements.

33. Hallenbeck reasonably and detrimentally relied on the misrepresentations and promises made to him by Defendants as alleged in paragraphs 15, 17, 24, and 27 of this Complaint. Among other things, Hallenbeck:

(a) Accepted the terms of the Employment Agreement;

(b) Provided valuable services to Defendants HIPP and Nisco;

(c) Commuted back and forth between Pennsylvania and Minnesota, often spending long hours in rental cars, airports, on airplanes, and in hotels, all of which caused stress and exhaustion and interfered with Hallenbeck's family and personal life;

(d) Incurred business expenses on personal credit cards on behalf of Defendants HIPP and Nisco;

(e) Renovated his home in Pennsylvania to prepare it for sale, incurring over $20,000 in unreimbursed expenses;

(f) Hired a realtor in Pennsylvania to sell his home, spent uncompensated time preparing the home for sale, and showed the home to potential buyers, all of which took considerable time and energy, caused disruption for Hallenbeck and his family, and intruded into their personal family life;

(g) Took house hunting trips from Pennsylvania to Minnesota;

(h) Attended industry conferences, meetings, and speaking engagements to cultivate relationships on behalf of Defendant Nisco;

(i) Negotiated for lab space needs on behalf of Defendant Disco;

(j) Leveraged his industry reputation and business relationships to seek out, recruit, and hire employees and consultants necessary to carry out the business purposes of Defendant Nisco;

(k) Leveraged his industry reputation and business relationships to seek out, recruit, and negotiate with vendors and suppliers to form strategic relationships with Defendant Nisco;

(l) Turned down other offers and employment opportunities;

(m) Deferred the creation of Hallenbeck's own business venture; and

(n) Delayed medical evaluations while loyally devoting countless hours to Defendants HIPP and Nisco that may have detected cancer at an earlier time, thereby improving Hallenbeck's chances for survival and reducing his pain, suffering, discomfort and chance of early death.

34. On or about May 17, 2010, Hallenbeck's regular gross pay check in the amount of $9,173.10 was deposited into his bank account by the usual third-party payroll administrator that was handling Defendants HIPP and Nisco's payroll obligations.

35. Soon thereafter, Hallenbeck discovered that the third-party payroll administrator withdrew the $9,173.10 originally deposited into his bank account on or about May 17, 2010.

36. Hallenbeck discovered from the third-party payroll administrator that Defendants HIPP and/or Nisco failed to pay on their account and the administrator was consequently forced to extract the $9,173.10 deposit, representing Hallenbeck's earned salary, from his bank account.

37. On or about May 21, 2010, Hallenbeck discovered that one of the John Does 1-10 or another third party, without proper authorization or authority, deposited $6,159.00 directly into his bank account without deducting state and federal income tax, FICA tax, or Medicare tax, in an amount which was identical to his "net" paycheck traditionally paid by Defendants HIPP and Nisco through the third party payroll administrator.

38. On or about June 1, 2010, Hallenbeck informed Defendants HIPP and Nisco, through Danko, of the foregoing payroll issues and the $6,159.00 deposit into his account without the regular state and federal income tax, FICA and Medicare deductions.

39. Upon information and belief, Defendants HIPP and Nisco failed to pay the employer's share of FICA and Medicare tax with respect to the May 21, 2010 payment.

40. Defendants, through Danko, informed Hallenbeck that Defendants HIPP and Nisco were in the process of setting up a new payroll system and would ensure the taxes and benefits were corrected as soon as the system was in place.

41. Upon information and belief, Defendants HIPP and Nisco never intended to set up a new payroll system and never intended to correct the income tax issues or their failure to contribute the employer's share of the FICA and Medicare tax with respect to the May 21, 2010 payment. Upon information and belief, Defendants HIPP and Nisco made the representations alleged in paragraph 40 of this Complaint to make it appear that Defendants HIPP and Nisco were solvent and that they fully intended to pay all of Hallenbeck's wages.

42. After May 21, 2010, Defendants HIPP and Nisco stopped making regular salary payments to Hallenbeck in the amounts set forth in the Employment Agreement. For long periods of time, often exceeding 31 days, Defendants HIPP and Nisco did not pay Hallenbeck any salary whatsoever. On other occasions, Defendants HIPP and Nisco paid Hallenbeck only a portion of his earned but unpaid salary owed at the time of such payments.

43. After May 21, 2010, on or about June 3, June 22, July 2, and July 6, 2010, Defendants HIPP, Nisco, John Does 1-10, or other third parties deposited money into Hallenbeck's bank account, representing partial payment for Hallenbeck's earned but unpaid salary and expense reimbursements, without deducting federal or state income taxes or the

employee's share of FICA and Medicare tax. Upon information and belief, Defendants HIPP and Nisco did not contribute the employer's share of FICA or Medicare tax with respect to these partial salary payments or remit any taxes to the appropriate taxing authorities.

44. Upon information and belief, Hallenbeck has suffered or will suffer damages based on Defendants HIPP and Nisco's failure to deduct state and federal income taxes from his wages and their failure to pay the employer's share of FICA and Medicare tax on his wages, which may result in Hallenbeck paying self-employment tax on such amounts; which may result in Hallenbeck being assessed with interest and/or tax penalties; and which ultimately may reduce the amount of Social Security and/or Medicare benefits available to him in the future.

45. On June 7, 2010, Hallenbeck's former attorney in Pennsylvania made a written demand to Defendants HIPP and George for payment of Hallenbeck's then-accrued unpaid wages and expenses. A true and correct copy of the demand letter is attached as Exhibit C.

46. On September 17, 2010, Hallenbeck made another written demand for his unpaid wages and expenses via e-mail to Danko, Molloy and Chafoulias.

47. Upon information and belief, Chafoulias was a director, officer, and owner of HIPP on September 17, 2010 and other material times alleged in this Complaint.

48. Upon information and belief, Chafoulias was a director, officer, and owner of Nisco on September 17, 2010 and other material times alleged in this Complaint.

49. On September 18, 2010, Hallenbeck reiterated his September 17, 2010 demand for wages and expenses and informed Defendants HIPP and Nisco, through Danko, Molloy and Chafoulias, that his family was hurting financially and was "in crisis mode."

50. On September 20, 2010, Molloy, on behalf of Defendants HIPP and Nisco, informed Hallenbeck via e-mail that:

> "Gus [Chafoulias] is getting you $20K as an advance...if some money is received tomorrow. An individual called Frank Mazzola [**"Mazzola"**] is sending in $50K tomorrow and another $50K by the end of the week."

A true and correct copy of the e-mail is attached as Exhibit D.

51. On September 23, 2010, Molloy, on behalf of Defendants HIPP and Nisco, informed Hallenbeck via e-mail that:

> "I called Mazzola this morning and spoke to him. He said he gave the bank instructions late yesterday afternoon to send $50,000. Wells Fargo has not received it. He called me back and said he had been on to his bank and they wired it this morning. I was very direct with him and told him we could not afford to lose you and I had to have the money. He said he understood and that there would be another $50K on tomorrow..."

A true and correct copy of the e-mail is attached as Exhibit E.

52. Upon information and belief, at the time Defendants HIPP and Nisco made the statements referenced in paragraphs 50 and 51 of the Complaint, Defendants HIPP and Nisco knew the statements were false or, alternatively, were negligent and careless in making such statements without knowing or adequately inquiring into the truth or falsity of such statements.

53. On September 23, 2010, Hallenbeck's attorney in Minnesota sent an e-mail to Defendants HIPP and Nisco reiterating the demand for payment of back wages and expenses due and owing to Hallenbeck. A true and correct copy of the e-mail is attached as Exhibit F.

54. On September 23, 2010, Hallenbeck received a payment of $20,000 from Defendants HIPP and Nisco, representing only a partial payment of the back wages and expense reimbursements owed to Hallenbeck at that time.

55. Upon information and belief, Defendants HIPP and Nisco failed to deduct state and federal income tax, or the employee's share of FICA and Medicare tax, from the September 23, 2010 payment. Upon information and belief, Defendants HIPP and Nisco failed to contribute the employer's share of FICA and Medicare tax with respect to this payment.

56. On September 24, 2010, Molloy, on behalf of Defendants HIPP and Nisco, called Hallenbeck to discuss his unpaid wages and expenses and admitted to Hallenbeck that Defendant George told "vicious lies" to everyone about Hallenbeck's employment status and Defendant Nisco's lack of financing.

57. On October 4, 2010, Molloy, on behalf of Defendants HIPP and Nisco, informed Hallenbeck via e-mail that:

> "By the way I did catch Frank Mazzola today and asked him where the cash was. He said: 'you will have the balance no later than . . . this week.'"

A true and correct copy of this e-mail is attached as Exhibit G.

58. On October 7, 2010, on behalf of Defendants HIPP and Nisco, Molloy informed Hallenbeck, and others, via e-mail that:

> "I spoke to Frank Mazzola again, as the money has not shown to our account. He says the money was wired and he is to get me the confirmation of that wire..."

A true and correct copy of this e-mail is attached as Exhibit H.

59. Upon information and belief, at the time Defendants HIPP and Nisco made the statements referenced in paragraphs 57 and 58 of the Complaint, Defendants HIPP and Nisco knew the statements were false or, alternatively, were negligent and careless in making such statements without knowing or adequately inquiring into the truth or falsity of such statements.

60. Upon information and belief, Defendants HIPP and Nisco made the statements alleged in paragraphs 50, 51, 57, and 58 of this Complaint to make it appear that Defendants HIPP and Nisco were solvent and that they fully intended to pay all of Hallenbeck's wages, and in order to induce Hallenbeck to continue working for HIPP and Nisco.

61. On October 8, 2010, Hallenbeck's attorney in Minnesota sent a demand letter to Defendants HIPP and Nisco via certified mail and e-mail reiterating Hallenbeck's demand for

back wages and expenses, providing them a final opportunity to cure their breaches under the Employment Agreement, and stating that if these breaches were not cured by October 15, 2010, Hallenbeck would consider this the termination of his employment, without cause, thereby triggering an obligation to pay him $110,000.00 of severance pay under the Employment Agreement. A true and correct copy of the letter (without attachments) is attached as Exhibit I.

62. On October 14, 2010, Hallenbeck received a payment of $20,000.00 from Defendants HIPP, Nisco, and/or John Does 1-10, representing only a partial payment of the back wages and expenses owed to Hallenbeck through that date.

63. Upon information and belief, Defendants HIPP and Nisco failed to deduct state and federal income tax, or the employee's share of FICA and Medicare tax, from the October 14, 2010 payment. Upon information and belief, Defendants HIPP and Nisco failed to contribute the employer's share of FICA and Medicare tax with respect to this payment.

64. On or about October, 14, 2010, Molloy, on behalf of Defendants HIPP and Nisco, told Hallenbeck during a telephone call that:

(a) HIPP's former companies were being split into separate companies;

(b) HIPP was "no more";

(c) Nisco would be an independent company from HIPP;

(d) Defendant George "duped" Molloy, Chafoulias and "many others;"

(e) Molloy received $50,000 from Mazzola earlier in the month and was planning to wire Hallenbeck $20,000 but Molloy was called away to a funeral in New York;

(f) The remaining $40,000 due from Mazzola would be used to pay Hallenbeck's remaining wages.

65. Upon information and belief, at the time Defendants HIPP and Nisco made the statements referenced in paragraph 64, subparagraphs (e) and (f) of the Complaint, Defendants

knew the statements were false or, alternatively, were negligent and careless in making such statements without knowing or adequately inquiring into the truth or falsity of such statements.

66. Upon information and belief, Defendants HIPP and Nisco made the statements referenced in paragraph 64, subparagraphs (e) and (f) of the Complaint, to make it appear that Defendants HIPP and Nisco were solvent and that they fully intended to pay all of Hallenbeck's wages, and in order to induce Hallenbeck to continue working for HIPP and Nisco.

67. On October 14, 2010, Hallenbeck sent a letter via e-mail and U.S. mail informing Defendants HIPP and Nisco that:

> "...if I do not receive the full balance still owed to me...by the close of business on Tuesday, October 19, I will consider this to be the constructive termination of my employment agreement and as stated earlier an additional $110,000 will also become immediately due."

A true and correct copy of the e-mail is attached as Exhibit J.

68. Following his October 14, 2010 demand for wages and unpaid expenses, Hallenbeck received no further payments from Defendants HIPP or Nisco.

69. On October 19, 2010, by failing to pay Hallenbeck his accrued but unpaid wages and expenses, Defendants HIPP and Nisco constructively and anticipatorily terminated Hallenbeck's employment and the Employment Agreement.

70. On or about October 20, 2010, following the termination of his employment, Hallenbeck sent Defendants HIPP and Nisco an e-mail message stating that his employment with Defendant Nisco had been effectively terminated and demanding:

(a) Payment of all earned but unpaid wages through the last day of employment;

(b) Payment of all unpaid expense reimbursements;

(c) Payment of stock options in accordance with the Employment Agreement; and

(d) Payment of severance pay equal to six month's salary (namely, $110,000.00) in accordance with the Employment Agreement.

A true and correct copy of the e-mail is attached as Exhibit K.

71. Following his October 20, 2010 written demand, Hallenbeck received no further payments from Defendants HIPP or Nisco.

72. On January 21, 2011, approximately three (3) months following the termination of his employment, Hallenbeck sent Defendants HIPP and Nisco another e-mail message reiterating his demand for the payment of all of his earned but unpaid wages. A true and correct copy of the e-mail is attached as Exhibit L.

73. Following his January 21, 2011 written demand, Hallenbeck received no further payments from Defendants HIPP or Nisco through the time of filing this Complaint.

74. At the time of filing this Complaint, as a result of Defendants' wrongful conduct, Hallenbeck has suffered damages including, but not limited to, the following:

(a) approximately $38,296.04 in earned but unpaid wages under the Employment Agreement;

(b) approximately $5,626.92 in earned but unpaid vacation representing 1.33 weeks of vacation under the Employment Agreement;

(c) approximately $6,987.21 in unpaid work-related expenses;

(d) $110,000.00 in unpaid severance under the Employment Agreement;

(e) unpaid bonus compensation equal to 100% of Hallenbeck's annual salary of $220,000.00 pursuant to the Employment Agreement, insofar as Hallenbeck met all goals stated in the Employment Agreement except for those goals that could not be met due to Defendants' lack of funding, and because Defendants never set additional pre-determined goals following those stated in the original Employment Agreement;

(f) approximately $20,000.00 in unreimbursed home improvements reasonably incurred by Hallenbeck due to Defendants' misrepresentations; and

(g) pre-judgment interest that continues to accrue.

75. As a result of Defendants' wrongful conduct, Hallenbeck has suffered, and will continue to suffer, damages including loss and diminution of other employment opportunities, irreparable and permanent damage to his career, damage to reputation, loss of prestige, loss of business and personal relationships, humiliation, and embarrassment. Upon information and belief, Defendants have revoked contractual and employment offers with, failed to pay, and/or defaulted in contractual obligations to numerous individuals and businesses Hallenbeck recruited at the direction of Defendants, using his good name, to perform services for Defendant Nisco.

76. As a result of Defendants' wrongful conduct, in addition to the damages specified above, Hallenbeck has suffered, and will continue to suffer, damages including past and future wage loss, loss of benefits, attorney's fees, court costs, pre-judgment interest, emotional distress, and pain and suffering, in an amount to be proven with specificity at trial.

77. Upon information and belief, Defendants HIPP, Nisco, George, and/or John Does 1-10 intentionally dismantled HIPP and/or Nisco and fraudulently transferred their assets to themselves or third parties, in part, to evade potential legal action from creditors, including Hallenbeck, with respect to the claims set forth in this Complaint.

Count I. Breach of Contract (Against HIPP and Nisco)

78. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

79. Hallenbeck and Defendants HIPP and Nisco, by their mutual assent, entered into a contractual agreement supported by good and valuable consideration, whereby Hallenbeck agreed to accept employment in accordance with the terms of the Employment Agreement.

80. Defendants HIPP and Nisco, in exchange, agreed to provide Hallenbeck with certain wages, expense reimbursements, bonuses, stock options, and severance pay as set forth in the Employment Agreement and as verbally confirmed and agreed by Defendants.

81. Defendants HIPP and Nisco have breached their contractual obligations by, among other things, failing to properly pay such wages, expenses, bonuses, stock options, severance pay, and failure to set bonus targets as required by the Employment Agreement.

82. Hallenbeck, for his part, has performed all of his obligations under the Employment Agreement and the contract between him and Defendants HIPP and Nisco.

83. As a result of the aforesaid conduct, Plaintiff has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count II. Violation of Minn. Stat. § 181.13
For Recovery of Wages Following Termination
(Against HIPP and Nisco)

84. Hallenbeck realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

85. Hallenbeck is an employee within the meaning of Minn. Stat. § 181.13.

86. Defendant HIPP is an employer within the meaning of Minn. Stat. §§ 181.13 and 181.171, subd. 4.

87. Defendant Nisco is an employer within the meaning of Minn. Stat. §§ 181.13 and 181.171, subd. 4.

88. Minn. Stat. § 181.13 provides that:

> "When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee."

89. Defendants HIPP and Nisco discharged Hallenbeck on or about October 19, 2010.

90. At the time of Hallenbeck's discharge, Defendants HIPP and Nisco owed Hallenbeck wages actually earned and unpaid.

91. Following his termination, on October 20, 2010, Hallenbeck made written demand for the wages actually earned and unpaid at the time of Hallenbeck's discharge. Again, on January 21, 2011, Hallenbeck made another demand for the wages actually earned and unpaid at the time of Hallenbeck's discharge.

92. Minn. Stat. § 181.13 provides that:

> "If the employee's earned wages and commissions are not paid within 24 hours after demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the employer is in default."

93. Defendants HIPP and Nisco failed to pay the wages actually earned at the time of Hallenbeck's discharge within 24 hours of Hallenbeck's demands.

94. Minn. Stat. § 181.13 provides that:

> "The discharged employee may charge and collect the amount of the employee's average daily earnings at the rate agreed upon in the contract of employment, for each day up to 15 days, that the employer is in default, until full payment or other settlement, satisfactory to the discharged employee, is made."

95. Defendants HIPP and Nisco failed to make full payment to Hallenbeck for the wages actually earned at the time of Hallenbeck's termination of employment, for a period exceeding 15 days from the date of Hallenbeck's demand for such wages and commissions.

96. Minn. Stat. § 181.171, subds. 1 and 3, provides that:

> "An employer who is found to have violated the above sections is liable to the aggrieved party for the civil penalties or damages provided for in the section violated. An employer who is found to have violated the above sections shall also be liable for compensatory damages and other appropriate relief including but not limited to injunctive relief.
>
> . . .
>
> Subd. 3. Attorney fees and costs. In an action brought under subdivision 1, the court shall order an employer who is found to have committed a violation to pay

> to the aggrieved party reasonable costs, disbursements, witness fees, and attorney fees."

97. Under Minn. Stat. §§ 181.13 and 181.171, Hallenbeck is entitled to recover from Defendants HIPP and Nisco damages including, but not limited to, the statutory penalty of the average daily earnings for 15 days as described in Minn. Stat. § 181.13(a), compensatory damages, other appropriate relief including but not limited to injunctive relief, reasonable costs, disbursements, witness fees, and attorney's fees.

98. As a result of the aforesaid conduct, Plaintiff has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count III. Violation of Minn. Stat. § 181.14
For Recovery of Wages Following Resignation
(Against HIPP and Nisco)
(In the Alternative)

99. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

100. Hallenbeck is an employee within the meaning of Minn. Stat. § 181.14.

101. Defendant HIPP is an employer under Minn. Stat. §§ 181.14 and 181.171.

102. Defendant Nisco is an employer under Minn. Stat. §§ 181.14 and 181.171.

103. Minn. Stat. § 181.14, subd.1 (a), provides that:

> "When any such employee quits or resigns employment, the wages or commissions earned and unpaid at the time the employee quits or resigns shall be paid in full not later than the first regularly scheduled payday following the employee's final day of employment, unless an employee is subject to a collective bargaining agreement with a different provision. If the first regularly scheduled payday is less than five calendar days following the employee's final day of employment, full payment may be delayed until the second regularly scheduled payday but shall not exceed a total of 20 calendar days following the employee's final day of employment."

104. To the extent that the fact-finder determines that Defendants HIPP and Nisco did not discharge Hallenbeck's employment within the meaning of Minn. Stat. § 181.13, then in the alternative, Hallenbeck alleges that he resigned his employment on or about October 19, 2010.

105. As of October 19, 2010, Defendants HIPP and Nisco owed Hallenbeck wages actually earned and unpaid.

106. Defendants HIPP and Nisco failed to make full payment to Hallenbeck for the wages actually earned prior to the first regularly scheduled payday following October 19, 2010 and for a period exceeding 20 days following his final day of employment.".

107. Minn. Stat. § 181.14, subd. 2, provides that:

> "Wages or commissions not paid within the required time period shall become immediately payable upon the demand of the employee."

108. On October 20, 2010, Hallenbeck made written demand for the wages actually earned and unpaid as of October 19, 2010. Again, on January 21, 2011, Hallenbeck made another demand for the wages actually earned and unpaid as of October 19, 2010.

109. Defendants HIPP and Nisco failed to pay the wages actually earned and unpaid within 24 hours of Hallenbeck's demands.

110. Minn. Stat. § 181.14, subd. 2, provides that:

> "If the employee's earned wages or commissions are not paid within 24 hours after the demand, the employer shall be liable to the employee for an additional sum equal to the amount of the employee's average daily earnings provided in the contract of employment, for every day, not exceeding 15 days in all, until such payment or other settlement satisfactory to the employee is made."

111. Upon information and belief, Defendants HIPP and Nisco failed, or will fail, to make full payment to Hallenbeck for the wages actually earned as of October 19, 2010, for a period exceeding 15 days following the 24-hour period of Hallenbeck's demands.

112. Upon information and belief, under Minn. Stat. § 181.14 and Minn. Stat. § 181.171, subds. 1 and 3, Hallenbeck is entitled to recover from Defendants HIPP and Nisco damages including, but not limited to, the statutory penalty of the average daily earnings for 15 days as described in Minn. Stat. § 181.14, subd. 2, compensatory damages and other appropriate relief including but not limited to injunctive relief, reasonable costs, disbursements, witness fees, and attorney's fees.

113. As a result of the aforesaid conduct, Plaintiff has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count IV. Violation of Minn. Stat. § 181.101
Recovery of Wages for Failure to Pay Every 31 Days
(Against HIPP and Nisco)

114. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

115. Hallenbeck is an employee within the meaning of Minn. Stat. § 181.101.

116. Defendant Nisco is an employer under Minn. Stat. §§ 181.101 and 181.171, subds. 1 and 3.

117. Defendant HIPP is an employer under Minn. Stat. §§ 181.101 and 181.171, subds. 1 and 3.

118. Minn. Stat. § 181.101 provides that:

> "Every employer must pay all wages earned by an employee at least once every 31 days on a regular payday designated in advance by the employer regardless of whether the employee requests payment at longer intervals. Unless paid earlier, the wages earned during the first half of the first 31-day pay period become due on the first regular payday following the first day of work."

119. Defendants HIPP and Nisco failed to make full payment to Hallenbeck for wages actually earned at least once every 31 days on a regular, bi-monthly basis as designated in advance by Defendants HIPP and Nisco.

120. Under Minn. Stat. § 181.101 and Minn. Stat. § 181.171, subds. 1 and 3, Hallenbeck is entitled to recover from Defendants HIPP and Nisco damages including but not limited to compensatory damages, reasonable costs, disbursements, witness fees, and attorney's fees.

121. As a result of the aforesaid conduct, Plaintiff has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count V. Violation of Minn. Stat. § 181.03
Demanding or Receiving Refund or Rebate of Wages
(Against HIPP and Nisco)

122. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

123. Hallenbeck is an employee within the meaning of Minn. Stat. § 181.03.

124. Defendant Nisco is an employer under Minn. Stat. §§ 181.03 and 181.171, subds. 1 and 3.

125. Defendant HIPP is an employer under Minn. Stat. §§ 181.03 and 181.171, subds. 1 and 3.

126. Minn. Stat. § 181.03, subd. 1(2) provides that:

> "An employer may not, directly or indirectly and with intent to defraud:
>
> ...
>
> (2) directly or indirectly demand or receive from any employee any rebate or refund from the wages owed the employee under contract of employment with the employer".

127. Minn. Stat. § 181.03, subd. 3, provides that:

> "An employer who violates this section is liable in a civil action brought by the employee for twice the amount in dispute."

128. Upon information and belief, with intent to defraud, Defendants HIPP and Nisco demanded and received from Hallenbeck a rebate or refund from the wages owed to Hallenbeck under the Employment Agreement. Among other things, Defendants HIPP and Nisco induced Hallenbeck to accept no paycheck or partial payments from the wages actually owed to Hallenbeck using false pretenses. Further, on occasions, Defendants made it appear that Hallenbeck was receiving the full amount of his gross salary when, in fact, Defendants instead deposited the "net amount" of his salary directly into his bank account.

129. Pursuant to Minn. Stat. § 181.03 and Minn. Stat. § 181.171, Hallenbeck is entitled to recover from Defendants HIPP and Nisco damages including, but not limited to, twice the amount of wages earned but not paid as a statutory penalty as described in Minn. Stat. § 181.03, subd. 3, compensatory damages, reasonable costs, disbursements, witness fees, and attorney's fees.

130. As a result of the aforesaid conduct, Plaintiff has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count VI. Violation of 43 Pennsylvania Statute § 260.3
Recovery of Wages for Failure to Pay on Regular Paydays
(Against HIPP and Nisco)

131. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

132. Hallenbeck is an employee within the meaning of 43 Pennsylvania Statutes ("P.S") §§ 260.3, 260.9a, and 260.10.

133. Defendant Nisco is an employer within the meaning of 43 P.S. §§ 260.3, and 260.9a.

134. Defendant HIPP is an employer within the meaning of 43 P.S. §§ 260.3, and 260.9a.

135. 43 P.S. § 260.3 provides that:

> "Every employer shall pay all wages, other than fringe benefits and wage supplements, due to his employes [sic] on regular paydays designated in advance by the employer."

136. Defendants HIPP and Nisco failed to make full payment to Hallenbeck for the wages actually earned as they became due at least once on a regular, bi-monthly basis as designated in advance in the Employment Agreement.

137. 43 P.S. § 260.9a (a) and (f) provide that:

> "(a) Any employe [sic] or group of employees, labor organization or party to whom any type of wages is payable may institute actions provided under this act.
>
> ...
>
> (f) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs for reasonable attorney's fees of any nature to be paid by the defendant."

138. 43 P.S. § 260.10 provides that:

> "Where wages remain unpaid for thirty days beyond the regularly scheduled payday, or, in the case where no regularly scheduled payday is applicable, for sixty days beyond the filing by the employe [sic] of a proper claim or for sixty days beyond the date of the agreement, award or other act making wages payable, or where shortages in the wage payments made exceed five percent (5%) of the gross wages payable on any two regularly scheduled paydays in the same calendar quarter, and no good faith contest or dispute of any wage claim including the good faith assertion of a right of set-off or counter-claim exists accounting for such non-payment, the employe [sic] shall be entitled to claim, in addition, as liquidated damages an amount equal to twenty-five percent (25%) of the total amount of wages due, or five hundred dollars ($500), whichever is greater."

139. Defendants HIPP and Nisco failed to make full payment to Hallenbeck for wages actually earned as they became due for at least 30 days beyond a regularly scheduled payday.

140. Under 43 P.S. §§ 260.3, 260.9a, and 260.10, Hallenbeck is entitled to recover from Defendants HIPP and Nisco damages including, but not limited to, the statutory penalty set forth in 43 P.S. § 260.10, costs, and reasonable attorney's fees.

141. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count VII. Violation of 43 Pennsylvania Statute § 260.5
Recovery of Wages for Failure to Pay Following Separation From Payroll
(Against HIPP and Nisco)

142. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

143. Hallenbeck is an employee within the meaning of 43 P.S. §§ 260.5, 260.9a, and 260.10.

144. Defendant Nisco is an employer within the meaning of 43 P.S. §§ 260.5, and 260.9a.

145. Defendant HIPP is an employer within the meaning of 43 P.S. §§ 260.5, and 260.9a.

146. 43 P.S. § 260.5 provides that:

> "Whenever an employer separates an employe [sic] from the payroll, or whenever an employe [sic] quits or resigns his employment, the wages or compensation earned shall become due and payable not later than the next regular payday of his employer on which such wages would otherwise be due and payable."

147. Hallenbeck's employment for Defendant Nisco ended on or about October 19, 2010.

148. At the time of Hallenbeck's termination, Defendants HIPP and Nisco owed Hallenbeck wages actually earned and unpaid.

149. Defendants HIPP and Nisco failed to make full payment to Hallenbeck for the wages actually earned on or before the first regularly scheduled payday following Hallenbeck's discharge.

150. Under 43 P.S. §§ 260.5, 260.9a, and 260.10, Hallenbeck is entitled to recover from Defendants HIPP and Nisco damages including but not limited to the statutory penalty in 43 P.S. § 260.10, costs, and reasonable attorney's fees.

151. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count VIII. Fraudulent Inducement
(Against HIPP, Nisco, and George)

152. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

153. Upon information and belief, Defendants HIPP, Nisco, and George made several material representations of fact or false promises to Hallenbeck as described in this Complaint.

154. Upon information and belief, Defendants HIPP, Nisco, and George either knew such representations to be false or asserted such knowledge without knowing whether they were true or false.

155. Upon information and belief, Defendants HIPP, Nisco, and George, by making such representations and promises, intended to induce Hallenbeck to enter into a contract of employment, take steps to relocate to Minnesota, continue to provide personal services to Defendants HIPP and Nisco, forego other employment opportunities, and otherwise act in detrimental reliance on such representations and promises.

156. Hallenbeck reasonably relied upon the representations made by Defendants HIPP, Nisco, and George, to his detriment, by taking such actions as described in paragraph 33 of this Complaint and otherwise detrimentally relying on such representations.

157. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count IX. Violation of Minn. Stat. § 181.64
False Statements as Inducement to Entering Employment
(Against HIPP, Nisco, and George)

158. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

159. Hallenbeck is a person within the meaning of Minn. Stat. §§ 181.64 and 181.65.

160. Defendant Nisco is a person, company, corporation, and organization within the meaning of Minn. Stat. §§ 181.64 and 181.65.

161. Defendant HIPP is a person, partnership, company, and organization within the meaning of Minn. Stat. §§ 181.64 and 181.65.

162. Defendant George is a person within the meaning of Minn. Stat. §§ 181.64 and 181.65.

163. Minn. Stat. § 181.64 provides that:

> "It shall be unlawful for any person, partnership, company, corporation, association, or organization of any kind, doing business in this state, directly or through any agent or attorney, to induce, influence, persuade, or engage any person to change from one place to another in this state, or to change from any place in any state, territory, or country to any place in this state, to work in any branch of labor through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning the kind or character of such work, the compensation therefor, the sanitary conditions relating to or surrounding it . . . ."

164. Upon information and belief, Defendants HIPP, Nisco, and George fraudulently induced, influenced, persuaded, and engaged Hallenbeck to accept their offer of employment and take steps to change from Pennsylvania to the State of Minnesota by making several knowingly false representations of fact to Hallenbeck concerning the kind and character of such work, and the compensation therefor, as described in this Complaint.

165. Upon information and belief, Defendants HIPP, Nisco, and George knew such representations to be false.

166. Upon information and belief, Defendants HIPP, Nisco, and George, by making such representations, intended to induce Hallenbeck to accept their offer of employment and take steps to change from Pennsylvania to the State of Minnesota.

167. As a result of such representations, Defendants HIPP, Nisco and George successfully induced Hallenbeck to enter and accept employment with Defendants HIPP and Nisco and to take steps to relocate to Minnesota.

168. Minn. Stat. § 181.65 provides that:

> "Any person who shall be influenced, induced, or persuaded to enter or change employment or change a place of employment through or by means of any of the things prohibited in section 181.64, shall have a right of action for the recovery of all damages sustained in consequence of the false or deceptive representations, false advertising, or false pretenses used to induce the person to enter into or change a place of employment, against any person, firm, association, or corporation directly or indirectly causing such damage; and, in addition to all such actual damages such person may have sustained, shall have the right to recover such reasonable attorney fees as the court shall fix, to be taxed as costs in any judgment recovered."

169. Under Minn. Stat. §§ 181.64 and 181.65, Hallenbeck is entitled to recover from Defendants HIPP, Nisco and George all actual damages sustained in consequence of the false or deceptive representations together with reasonable attorney's fees.

170. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count X. Fraud and Misrepresentation (Against HIPP, Nisco, and George)

171. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

172. Upon information and belief, Defendants HIPP, Nisco, and George made several material representations of fact or false promises to Hallenbeck as described in this Complaint.

173. Upon information and belief, Defendants HIPP, Nisco, and George either knew such representations to be false or asserted such knowledge without knowing whether they were true or false.

174. Upon information and belief, Defendants HIPP, Nisco, and George, by making such representations and promises, intended to induce Hallenbeck to enter into a contract of employment, take steps to relocate to Minnesota, continue to provide personal services to Defendants HIPP and Nisco, forego other employment opportunities, and otherwise act in detrimental reliance on such representations and promises.

175. Hallenbeck reasonably relied upon the representations made by Defendants HIPP, Nisco, and George, to his detriment, by taking such actions as described in paragraph 33 of this Complaint and otherwise detrimentally relying on such representations.

176. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count XI. Negligent Misrepresentation (Against HIPP, Nisco, and George)

177. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

178. Upon information and belief, Defendants HIPP, Nisco, and George made several negligent representations of fact or promises to Hallenbeck as described in this Complaint.

179. Upon information and belief, Defendants HIPP, Nisco, and George, in the course of their business, profession or employment, and in a transaction in which they had a pecuniary interest, supplied false information for the guidance of Hallenbeck in his business transactions.

180. Upon information and belief, Defendants HIPP, Nisco, and George failed to exercise reasonable care or competence in obtaining or communicating the information to Hallenbeck as alleged in this Complaint.

181. Upon information and belief, Defendants HIPP, Nisco, and George, by making such representations and promises, intended to induce Hallenbeck to enter into a contract of employment, take steps to relocate to Minnesota, continue to provide personal services to Defendants HIPP and Nisco, forego other employment opportunities, and otherwise act in detrimental reliance on such representations and promises.

182. Hallenbeck reasonably relied upon the representations made by Defendants HIPP, Nisco, and George, to his detriment, by taking such actions as described in paragraph 33 of this Complaint and otherwise detrimentally relying on such representations.

183. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count XII. Promissory Estoppel (Against HIPP, Nisco, and George)

184. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

185. Defendants HIPP, Nisco, and George made several promises to Hallenbeck as described in this Complaint.

186. Defendants HIPP, Nisco, and George, in making the aforesaid promises to Hallenbeck should have reasonably expected to induce Hallenbeck to accept employment with Defendants HIPP and Nisco, continue his employment, and to take such actions as described in paragraph 33 of this Complaint in reliance on such promises.

187. In reliance on Defendants HIPP, Nisco, and George's promises, Hallenbeck did, in fact, accept employment with Defendants HIPP and Nisco, continued his employment, and took such actions as described in paragraph 33 of this Complaint.

188. Justice requires enforcement of Defendants' promises to compensate Hallenbeck in the form of certain wages, expense reimbursements, bonuses, stock options, and severance pay as promised by Defendants HIPP, Nisco, and George.

189. As a result of the aforesaid conduct, Plaintiff has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

Count XIII. Violation of Federal Fair Labor Standards Act (Against HIPP, Nisco, George, and John Does 1-10)

190. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

191. Hallenbeck is an employee within the meaning of 29 U.S.C. § 203(e)(1).

192. Defendant HIPP is an employer within the meaning of 29 U.S.C. § 203(d).

193. Defendant Nisco is an employer within the meaning of 29 U.S.C. § 203(d).

194. Defendant George is an employer within the definition of 29 U.S.C. § 203(d).

195. One or more of Defendants John Does 1-10 are employers within the definition of 29 U.S.C. § 203(d).

196. Hallenbeck is not exempt from the minimum wage and overtime requirements of the federal Fair Labor Standards Act (the "**FLSA**").

197. Hallenbeck was not paid on a "salary basis" within the meaning of the FLSA (*see, e.g.*, 29 C.F.R. § 541.602) because Defendants HIPP and Nisco failed to pay Hallenbeck a predetermined amount constituting all or part of his compensation and failed to pay Hallenbeck his full salary for certain workweeks in which he performed work.

198. Pursuant to 29 U.S.C § 206(b), an employer "shall pay to each of his employees...who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce . . . not less than the minimum wage rate . . . ."

199. During Hallenbeck's employment by Defendants HIPP and Nisco, Hallenbeck was engaged in commerce and in the production of goods for commerce, and was employed in an enterprise engaged in commerce or in the production of goods for commerce.

200. During Hallenbeck's employment by Defendants HIPP and Nisco, Defendants HIPP, Nisco, George, and/or John Does 1-10 failed to pay Hallenbeck the minimum wage rate for hours worked during certain workweeks.

201. Pursuant to 29 U.S.C. § 207(a)(1), no employer "shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and on-half times the regular rate at which he is employed."

202. During Hallenbeck's employment by Defendants HIPP and Nisco, Hallenbeck routinely worked in excess of forty hours during multiple workweeks.

203. Defendants HIPP, Nisco, George, and/or John Does 1-10 failed to compensate Hallenbeck for hours worked in excess of forty hours per workweek at a rate of at least one and one-half times his regular rate of pay as required by 29 U.S.C. § 207(a)(1).

204. Defendants HIPP, Nisco, George, and/or John Does 1-10 failed to pay wages due and owing to Hallenbeck, including minimum wage and overtime pay.

205. Defendants HIPP and Nisco have violated the federal FLSA and directly and proximately caused Hallenbeck to suffer damages including unpaid salary, minimum wages, and overtime pay to which he is entitled.

206. Pursuant to 29 U.S.C. § 216(b), Hallenbeck is owed unpaid salary, minimum wages, overtime pay, an additional equal amount as liquidated damages, plus reasonable costs, disbursements, witness fees, and attorney's fees incurred in this action.

Count XIV. Piercing the Nisco Corporate Veil (Against HIPP, George, and John Does 1-10)

207. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

208. Upon information and belief, Defendants HIPP, George, and John Does 1-10 operated Defendant Nisco without sufficient capitalization for purposes of corporate undertaking.

209. Upon information and belief, Defendants HIPP, George, and John Does 1-10 operated Defendant Nisco while failing to observe corporate formalities.

210. Upon information and belief, Defendants HIPP, George, and John Does 1-10 knew or should have known Defendant Nisco was insolvent at the time Hallenbeck was made the offer of employment.

211. Upon information and belief, Defendants HIPP, George, and John Does 1-10 knew or should have known Defendant Nisco remained insolvent during the course of Hallenbeck's employment with Defendants HIPP and Nisco.

212. Upon information and belief, Defendants HIPP, George, and John Does 1-10

knew or should have known that Defendant HIPP, as the dominant shareholder of Defendant Nisco, was transferring assets and funds from Defendant Nisco.

213. Upon information and belief, Defendants HIPP, George, and John Does 1-10 knew or should have known that Defendant Nisco had no properly functioning officers and directors.

214. Upon information and belief, Defendants HIPP, George, and John Does 1-10 knew or should have known that Defendant Nisco lacked corporate records.

215. Upon information and belief, Defendants HIPP, George, and John Does 1-10 knew or should have known that Defendant Nisco was operated merely as a façade for individual dealings on behalf of Defendants HIPP, George, and John Does 1-10.

216. If Defendants HIPP, George, and John Does 1-10 are allowed to rely upon the limitations of liability afforded under Minnesota state law with respect to corporations, injustice or fundamental unfairness to Hallenbeck has and will continue to occur as Hallenbeck has taken steps in reasonable reliance upon representations made by Defendants Nisco, HIPP, and George.

217. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

218. As a result of the aforesaid conduct, Defendants HIPP, George, and John Does 1-10 are jointly and severally liable for Hallenbeck's damages as set forth in this Complaint and any judgment entered against Defendant Nisco thereon.

219. As a result of the aforesaid conduct, following discovery in this action and/or at the time of trial or entry of judgment, Hallenbeck should be allowed to add the responsible officers, directors, shareholders, and agents of Defendant Nisco as additional defendants in this action once their identities become known to Hallenbeck.

220. The aforesaid conduct, including the continued dissipation of Defendants' assets, for which there is no complete adequate remedy at law, is irreparable, continuing in nature, and will continue unless properly enjoined. As a result, Hallenbeck is entitled to injunctive relief, including but not limited to an order of pre-judgment attachment against Defendants Nisco, HIPP, George, and John Does 1-10.

Count XV. Piercing the HIPP Corporate Veil
(Against George and John Does 1-10)

221. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

222. Upon information and belief, Defendants George and John Does 1-10 operated Defendant HIPP with insufficient capitalization for purposes of corporate undertaking.

223. Upon information and belief, Defendants George and John Does 1-10 operated Defendant HIPP while failing to observe corporate formalities.

224. Upon information and belief, Defendants George and John Does 1-10 knew or should have known Defendant HIPP was insolvent at the time Hallenbeck was made the offer of employment.

225. Upon information and belief, Defendants George and John Does 1-10 knew or should have known Defendant HIPP remained insolvent during the course of Hallenbeck's employment with Defendants HIPP and Nisco.

226. Upon information and belief, Defendants George and John Does 1-10 knew or should have known that Defendants George and/or John Does 1-10, as the dominant shareholder of Defendant HIPP, was transferring assets from Defendant HIPP.

227. Upon information and belief, Defendants George and John Does 1-10 knew or should have known that Defendant HIPP had no properly functioning officers and directors.

228. Upon information and belief, Defendants George and John Does 1-10 knew or should have known that Defendant HIPP lacked corporate records.

229. Upon information and belief, Defendants George and John Does 1-10 knew or should have known that Defendant HIPP was operated merely as a façade for individual dealings on behalf of Defendants George and John Does 1-10.

230. If Defendants George and John Does 1-10 are allowed to rely upon the limitations of liability afforded under Minnesota state law with respect to limited liability companies, injustice or fundamental unfairness to Hallenbeck has and will continue to occur as Hallenbeck has taken steps in reasonable reliance upon representations made by Defendants Nisco, HIPP and George.

231. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

232. As a result of the aforesaid conduct, Defendants George and John Does 1-10 are jointly and severally liable for Hallenbeck's damages as set forth in this Complaint and any judgment entered against Defendant HIPP thereon.

233. As a result of the aforesaid conduct, following discovery in this action and/or at the time of trial or entry of judgment, Hallenbeck should be allowed to add the responsible managers, governors, members, and agents of Defendant HIPP as additional defendants in this action once their identities become known to Hallenbeck.

234. The aforesaid conduct, including the continued dissipation of Defendants' assets, for which there is no complete adequate remedy at law, is irreparable, continuing in nature, and will continue unless properly enjoined. As a result, Hallenbeck is entitled to injunctive relief,

including but not limited to an order of pre-judgment attachment against Defendants Nisco, HIPP, George, and John Does 1-10.

Count XVI. Minn. Stat. § 513.44
Relief From Fraudulent Transfer
(Against HIPP, Nisco, George, and John Does 1-10)

235. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

236. Hallenbeck is a "creditor" of Defendants HIPP and Nisco within the meaning of Minn. Stat. § 513.44.

237. Hallenbeck is a creditor with a "claim" against Defendants HIPP and Nisco within the meaning of Minn. Stat. § 513.44.

238. Defendant Nisco is a "debtor" within the meaning of Minn. Stat. § 513.44.

239. Defendant HIPP is a "debtor" within the meaning of Minn. Stat. § 513.44.

240. Upon information and belief, Defendant Nisco made a "transfer" within the meaning of Minn. Stat. § 513.46.

241. Upon information and belief, Defendant HIPP made a "transfer" within the meaning of Minn. Stat. § 513.46.

242. Minn. Stat. § 513.44 provides that:

> "(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
>
> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the

> debtor were unreasonably small in relation to the business or transaction; or
>
> (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due."

243. Upon information and belief, Defendant Nisco made a transfer of all or substantially all of its assets to Defendants HIPP, George, and/or John Does 1-10 with the actual intent to hinder, delay, or defraud creditors including Hallenbeck.

244. Upon information and belief, Defendant HIPP made a transfer of all or substantially all of its assets to Defendants George and/or John Does 1-10 with the actual intent to hinder, delay, or defraud creditors including Hallenbeck.

245. Upon information and belief, Defendant Nisco made a transfer of all or substantially all of its assets to Defendants HIPP, George, and/or John Does 1-10 without receiving a reasonably equivalent value in exchange for the transfer.

246. Upon information and belief, Defendant HIPP made a transfer of all or substantially all of its assets to Defendants George and/or John Does 1-10 without receiving a reasonably equivalent value in exchange for the transfer.

247. Upon information and belief, Defendants HIPP and Nisco engaged or were about to engage in a transaction for which their remaining assets were unreasonably small in relation to the transaction including, but not limited to, entering into the Employment Agreement, continuing to accept personal services from Hallenbeck, and inducing Hallenbeck to continue his employment.

248. Upon information and belief, Defendants HIPP and Nisco intended to incur or reasonably should have believed that they would incur debts beyond their ability to pay as they became due by taking actions including, but not limited to, entering into the License Agreement

with Mayo, entering into the Employment Agreement with Hallenbeck, continuing to accept personal services from Hallenbeck, and inducing Hallenbeck to continue his employment.

249. Minn. Stat. § 513.47 provides that:

> "In an action for relief against a transfer or obligation under sections 513.41 to 513.51, a creditor, subject to the limitations in section 513.48, may obtain:
>
> (1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
>
> (2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter 570;
>
> (3) subject to applicable principles of equity and in accordance with applicable Rules of Civil Procedure:
>
> (i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
>
> (ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
>
> (iii) any other relief the circumstances may require."

250. Under Minn. Stat. §§ 513.44 and 513.47, Hallenbeck is entitled to avoid the transfer or obligation necessary to satisfy his claim against Defendants HIPP and Nisco, an attachment or other provisional remedy against the assets transferred, an injunction against further disposition by Defendants HIPP and Nisco, appointment of a receiver to take charge of the assets transferred, and any other relief the circumstances may require.

251. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

252. As a result of the aforesaid conduct, Defendants HIPP, Nisco, George, and John Does 1-10 are jointly and severally liable for Hallenbeck's damages as set forth in this Complaint and any judgment entered against Defendants thereon.

253. As a result of the aforesaid conduct, following discovery in this action and/or at the time of trial or entry of judgment, Hallenbeck should be allowed to add the persons and entities to whom Defendants' assets have been fraudulently transferred as additional defendants in this action once their identities become known to Hallenbeck.

254. The aforesaid conduct, including the continued dissipation of Defendants' assets, for which there is no complete adequate remedy at law, is irreparable, continuing in nature, and will continue unless properly enjoined. As a result, Hallenbeck is entitled to injunctive relief, including but not limited to an order of pre-judgment attachment against Defendants Nisco, HIPP, George, and John Does 1-10.

Count XVII. Minn. Stat. § 513.45 Relief From Fraudulent Transfer
(Against HIPP, Nisco, George, and John Does 1-10)

255. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

256. Hallenbeck is a "creditor" of Defendants HIPP and Nisco within the meaning of Minn. Stat. § 513.45.

257. Hallenbeck is a creditor with a "claim" against Defendants HIPP and Nisco within the meaning of Minn. Stat. § 513.45.

258. Defendant Nisco is a "debtor" within the meaning of Minn. Stat. § 513.45.

259. Defendant HIPP is a "debtor" within the meaning of Minn. Stat. § 513.45.

260. Upon information and belief, Defendant Nisco made a "transfer" within the meaning of Minn. Stat. § 513.46.

261. Upon information and belief, Defendant HIPP made a "transfer" within the meaning of Minn. Stat. § 513.46.

262. Minn. Stat. § 513.45 provides that:

> "A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation."

263. Upon information and belief, Defendant Nisco transferred all or substantially all of its assets to Defendants HIPP, George, and/or John Does 1-10 without receiving a reasonably equivalent value in exchange for the transfer.

264. Upon information and belief, Defendant HIPP transferred all or substantially all of its assets to Defendants George and/or John Does 1-10 without receiving a reasonably equivalent value in exchange for the transfer.

265. Upon information and belief, Defendant Nisco was insolvent at the time of the transfer or became insolvent as a result of the transfer.

266. Upon information and belief, Defendant HIPP was insolvent at the time of the transfer or became insolvent as a result of the transfer.

267. Under Minn. Stat. §§ 513.45 and 513.47, Hallenbeck is entitled to avoid the transfer or obligation necessary to satisfy his claim against Defendants Nisco and HIPP, an attachment or other provisional remedy against the asset transferred, an injunction against further disposition by Defendants HIPP and Nisco, appointment of a receiver to take charge of the assets transferred, and any other relief the circumstances may require.

268. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

269. As a result of the aforesaid conduct, Defendants HIPP, Nisco, George, and John Does 1-10 are jointly and severally liable for Hallenbeck's damages as set forth in this Complaint and any judgment entered against Defendants thereon.

270. As a result of the aforesaid conduct, following discovery in this action and/or at the time of trial or entry of judgment, Hallenbeck should be allowed to add the persons and entities to whom Defendants' assets have been fraudulently transferred as additional defendants in this action once their identities become known to Hallenbeck.

271. The aforesaid conduct, including the continued dissipation of Defendants' assets, for which there is no complete adequate remedy at law, is irreparable, continuing in nature, and will continue unless properly enjoined. As a result, Hallenbeck is entitled to injunctive relief, including but not limited to an order of pre-judgment attachment against Defendants Nisco, HIPP, George, and John Does 1-10.

Count XVIII. Successor Liability
(Against George and John Does 1-10)

272. Plaintiff realleges and reincorporates all of the allegations contained in the preceding paragraphs as though fully set forth herein.

273. Defendants HIPP and Nisco refused to pay Hallenbeck wages and expense reimbursements owed to Hallenbeck and perform other contractual obligations stating that they were insolvent and unable to pay such amounts.

274. Upon information and belief, Defendant Nisco has transferred substantially all of its assets to Defendants HIPP, George, and/or John Does 1-10.

275. Upon information and belief, Defendant HIPP has transferred substantially all of its assets to Defendants George and/or John Does 1-10.

276. Upon information and belief, Defendants HIPP, George, and John Does 1-10

explicitly assumed the liability of Defendant Nisco when assuming business operations with the same ownership, management, employees, office, equipment, and clients.

277. Upon information and belief, Defendants George and John Does 1-10 explicitly assumed the liability of Defendant HIPP when assuming business operations with the same ownership, management, employees, office, equipment, and clients.

278. Upon information and belief, Defendants John Does 1-10 are individuals or business entities created by Defendants George, HIPP, Nisco and/or the officers, managers, directors, governors, shareholders, members, and/or partners of Defendants HIPP and Nisco with the intent to hinder, delay, and/or defraud creditors and potential creditors, including Hallenbeck, in violation of Minn. Stat. §§ 513.44 and 513.45.

279. As a result of the fraudulent transfers, Defendants HIPP, George, and John Does 1-10, should be held liable as successors to the liabilities and obligations of Defendants HIPP and Nisco with respect to Hallenbeck.

280. As a result of the aforesaid conduct, Hallenbeck has suffered damages in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial.

281. As a result of the aforesaid conduct, Defendants HIPP, Nisco, George, and John Does 1-10 are jointly and severally liable for Hallenbeck's damages as set forth in this Complaint and any judgment entered against Defendants thereon.

282. As a result of the aforesaid conduct, following discovery in this action and/or at the time of trial or entry of judgment, Hallenbeck should be allowed to add the successors to HIPP and/or Nisco as additional defendants in this action once their identities become known to Hallenbeck.

283. The aforesaid conduct, including the continued dissipation of Defendants' assets, for which there is no complete adequate remedy at law, is irreparable, continuing in nature, and will continue unless properly enjoined. As a result, Hallenbeck is entitled to injunctive relief, including but not limited to an order of pre-judgment attachment against Defendants Nisco, HIPP, George, and John Does 1-10.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Grant Plaintiff a trial by jury with respect to all claims triable by jury as a matter of right and, pursuant to Fed. R. Civ. P. 39, try all remaining issues with an advisory jury;

B. Enter judgment declaring that Defendants HIPP, Nisco, George, and John Does 1-10 are liable to Plaintiff for wages, expenses, bonuses, stock options and severance pay owing and unpaid, statutory penalties and liquidated damages provided by federal and state law as alleged in this Complaint, along with accrued interest, and all other damages suffered by Plaintiff;

C. Enter judgment in favor of Plaintiff and against Defendants Nisco, HIPP, George, and John Does 1-10, jointly and severally, in an amount in excess of Seventy Five Thousand Dollars ($75,000.00) to be proven with specificity at trial;

D. Award Plaintiff his costs and disbursements herein, including reasonable attorney's fees, court costs, witness fees, and expenses;

E. Award Plaintiff double his costs pursuant to Minn. Stat. § 549.03;

F. Enjoin Defendants HIPP, Nisco, George, and John Does 1-10 to avoid the fraudulent transfer of assets necessary to satisfy Hallenbeck's claims against Defendants and attach Defendants' assets until the action is resolved and the claims are satisfied;

G. Grant Plaintiff leave to amend his Complaint to add a claim for punitive damages;

H. Grant Plaintiff leave to amend his Complaint to add the names of John Does 1-10 as additional defendants once their identities become known to Plaintiff; and

I. Award such other and further relief as the Court deems just and equitable.

Dated: January 24, 2011.

TREPANIER & MACGILLIS P.A.

By: ______________________________

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